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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,917	08/09/2006	Masayoshi Yoshida	8048-1175	2906

466   7590   11/13/2009
YOUNG & THOMPSON
209 Madison Street
Suite 500
Alexandria, VA 22314

EXAMINER
FISCHER, MARK L

ART UNIT	PAPER NUMBER
2627	

NOTIFICATION DATE	DELIVERY MODE
11/13/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

Advisory Action **Before the Filing of an Appeal Brief**	Application No. *10/588,917*	Applicant(s) YOSHIDA ET AL.	
	Examiner Mark Fischer	Art Unit 2627	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>04 November 2009</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☒ The period for reply expires <u>3</u> months from the mailing date of the final rejection.

   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ They raise the issue of new matter (see NOTE below);

   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: _____.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/HOA T NGUYEN/
Supervisory Patent Examiner, Art Unit 2627

/Mark Fischer/
Examiner, Art Unit 2627

Continuation of 11. does NOT place the application in condition for allowance because:

While the Terminal Disclaimer filed on 11/4/09 has been approved, and the double patenting rejection for claims 18 and 19 has been withdrawn, claims 18 and 19 are still rejected under 35 U.S.C. 103(a).

Applicant argues on Page 4 that even if the "update flag" discussed in Mitsuda is applied to the plurality of DMAs discussed in Park, the following construction is merely obtained such that "update flag for indicating whether or not the pervious writing in the respective one area (i.e. the respective one DMA) has been terminated normally." However, if Park in view of Mitsuda yields the construction that "update flag for indicating whether or not the previous writing in the respective one area (i.e. the respective one DMA) has been terminated normally", as indicated by Applicant, then it must be obvious that since Park has a plurality of areas and thus a plurality of DMAs, that a plurality of reliability information can be used, the plurality of reliability information corresponding to the plurality of areas.

Applicant argues on Page 4 that even if the "update flag" disclosed in Mitsuda is applied to the plurality of DMAs disclosed in Park, the following construction is merely obtained such as "update flag for redundantly indicating whether or not the writing of same information has been terminated normally." However, [0048] of Park does not disclose the recorded value in DMA1, the recorded value in DMA2, the recorded value in DMA3 and the recorded value in DMA4 are same to each other, but rather [0048] of Park discloses that the DMA region that DMA1, DMA2, DMA3, and DMA4 store the same information, but rather [0048] of Park discloses that the DMA includes a plurality of areas (DMA1, DMA2, DMA3 and DMA4), where final values of the TDMA are transferred to the DMA in general. There is no disclosure that final values of the TDMA are redundantly stored into each of DMA1, DMA2, DMA3, and DMA4, and there is no mention of redundancy of the final values of the TDMA. Since Applicant's argument on Page 4 is based on duplication of the final values, the argument cannot be considered.